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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1680

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS, *Petitioners*

v.

DONALD T. DORSEY, Commissioner of the Department of Community Affairs of the State of Connecticut; ROBERT I. BERDON, Treasurer of the State of Connecticut; ADOLPH G. CARLSON, Commissioner of Finance and Control of the State of Connecticut; NATHAN G. AGOSTINELLI, Comptroller of the State of Connecticut; and BARTHOLOMEW GUIDA, Mayor of the City of New Haven, *Respondents*

AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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On Petition for a Writ of Certiorari to the Supreme Court of the State of Connecticut

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BRIEF FOR THE NATIONAL TENANTS ORGANIZATION AS AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Pursuant to the written consent of the parties, filed with the Clerk of this Court in accordance with Rule 42(1), the above named organization respectfully submits this brief as *amicus curiae* in support of the

petition for a writ of certiorari to the Supreme Court of the State of Connecticut.

INTEREST OF AMICUS

Amicus National Tenants Organization (hereinafter NTO) is a non-profit corporation whose members include tenants of low-rent public housing projects throughout the nation and local organizations of such tenants. It currently has 350 affiliate organizations in 24 states plus the District of Columbia, Puerto Rico, the Virgin Islands and Canada, with a nationwide membership conservatively estimated at 300,000 tenants. NTO's stated purpose is to promote the legal, political and economic rights of poor tenants in the United States. In furtherance of its stated purpose, NTO respectfully urges that this Court grant the requested writ and decide whether tenants may serve as commissioners of local public housing authorities. Issuance of the writ and a later decision on the merits in the petitioners' favor will result in local public housing authorities' being more attuned to the needs, difficulties and frustrations faced by the poor residing in federally assisted public housing.

NTO respectfully urges this Court to grant the petition for the writ of certiorari and to decide, for the first time, whether a tenant of a federally assisted public housing project may be deprived of the opportunity to serve as a commissioner of the local public housing authority solely because of his or her status as a tenant.

Amicus is confident that the petitioners and respondents will argue the significant constitutional issues of federal preemption, equal protection and due process raised by this case. Accordingly, amicus will not re-

argue these issues but will, instead, merely attempt to demonstrate the significant policy questions raised by the decisions of the Connecticut courts and will indicate the danger those decisions pose to the continued viability of public housing programs.

ARGUMENT

I

The Writ Should Be Granted Because the Case Raises Questions of Nationwide Importance Which Have Not Yet Been Decided by This Court.

For the first time in its history, this Court has been asked to consider a state court's decision that it is illegal for tenants to serve as commissioners of their local housing authorities, despite an Act of Congress stating that:

> [i]t is the sense of the Congress that no person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low rent housing project. [42 U.S.C. § 1401.]

This Court should now decide whether public tenants as a class may or may not sit on local commissions, or whether, in light of the varying state policies on this question, the constitutional rights of tenants may be subjected to the vagaries of political boundaries.

Local housing authorities are authorized in each state of the union. The overwhelming majority of state legislation does not address the issue of tenant commissioners. Moreover, in 39 states neither the legislature nor the courts nor the executive has spoken to the issue raised by this case. Thus the status of tenant-commissioners is currently undecided in most

states, and the constitutional rights of tenants are subject to the varying social, political and legal climates in each jurisdiction.

Amicus does not contend that tenants must be appointed to commissions, but only that they not be precluded from serving solely because of their status as tenants. Accordingly, amicus realizes that, to some extent, the question of whether tenants serve as commissioners will vary from jurisdiction to jurisdiction. Amicus does contend, however, that tenants may not be prohibited by law from serving as commissioners in one state while tenants in another state may serve. The low-rent public housing program is a nationwide program, authorized and financed in part by the federal government. In such a situation, it is totally inappropriate for individual states to deprive tenants of the opportunity to serve as local commissioners, an opportunity which the federal government, speaking through Congress, deemed it wise to offer. If only to insure a uniform national policy for residents of federally subsidized housing projects, this Court should issue the writ and decide the issue on its merits.

The widespread importance of this case is emphasized by the number of affected bodies. In Connecticut alone there are 29 local housing authorities which operate 22,110 housing units. Throughout the nation, the Department of Housing and Urban Development estimates there are 2,793 local housing authorities operating 1,607,584 units which house approximately 3.3 million tenants. *See* Department of Housing and Urban Development, "Local Authorities Participating in Low-Rent Housing Programs," Report S-102 at VI, 45 (1972). An issue affecting the most fundamental

element in the lives of more than three million persons—their shelter—surely is one that warrants this Court's exercise of sound judicial discretion to grant the petition.

II

The Exclusion of Tenants from Housing Authority Commissions Is Detrimental to Tenants, to the Commissions and Their Programs, and to the Public Generally.

Public housing programs have, by most accounts, failed to meet their twin goals of eliminating slums and providing decent, safe and sanitary shelter for the poor. *See, e.g.,* Friedman, "Public Housing and the Poor: An Overview," 54 Calif. L. Rev. 642 (1966). This is amply demonstrated by the recently announced demolition of the Pruitt-Igoe Project in St. Louis, a 57-acre site containing 33 11-story buildings which, when built almost 20 years ago, was hailed as the new hope for public housing. The reasons for this failure are undoubtedly complex and varied, but among them is the dissatisfaction of tenants with their surroundings. Until recently, public housing projects were large, impersonal buildings designed with little regard for the likes and dislikes of the occupants. To a great degree, the fault for poorly planned public housing developments lies with those most responsible for the shape and form of public housing in the local community—the local housing authority commissioners.

By statute, regulation and custom, the responsibilities of housing authority commissioners are extensive. For example, 42 U.S.C. § 1401 states that:

> [i]t is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of

> the low rent housing program, including responsibility for the establishment of rents and eligibility requirements. . . .

Decisions made by local commissioners affect every aspect of the public housing program and are of critical importance. Commissioners decide whether to have a program at all, how large a program to have, where to build units, how to select tenants, what rent to set, what rules to promulgate and enforce, and whom to hire to administer the program and individual projects. *See, e.g.,* Abrams, *The Future of Housing*, 282 (1946). As the difficulties of public housing demonstrate, the decisions made by the commissioners have frequently been wrong.

Moreover, the decisions have been wrong precisely because commissioners do not understand and are out of touch with the wants and needs of their constituents, public housing tenants. Any tenant who had lived in a large, impersonal highrise project could have told commissioners that such projects breed crime, vandalism, insecurity and dissatisfaction. Under present circumstances, however, there is little direct contact between commissioners and tenants. The result is that local housing authorities often make decisions directly affecting tenant life without meaningful tenant input. Permitting tenants to serve as commissioners would provide effective tenant input into policy making decisions and could well avoid the errors made by non-tenant commissioners.

Public housing has been plagued with tenant neglect of units, which, to a significant degree, is a result of tenant attitudes toward the project and from their belief that their apartments are not their property. This,

in turn, is caused by the uncertainty of tenant tenure in low-rent projects, in which they believe they have no stake. Violation of a laundry-list of rules, enacted by the commissioners and enforced by their employees, the project managers, may result in tenant eviction. Only recently has this Court held that tenants must be given reasons for their eviction. *Thorpe* v. *Housing Authority of the City of Durham,* 386 U.S. 670 (1967).

Tenant perceptions of their uncertain tenure are reinforced by the use of their short-term leases in public housing. The overwhelming majority of housing authorities refuse to grant tenants a lease for a term longer than month-to-month. Friedman, "Public Housing and the Poor: An Overview," *supra,* at 660. It would be surprising if tenant commissioners would fail to warn non-tenant commissioners of the resentment generated by short-term leases. It would also be surprising if, after granting longer-term leases, tenant neglect did not decrease to some degree. Whether tenant neglect decreases with the use of longer-term leases is not, however, the salient point. The salient point is that public housing tenants, alone among other classes of tenants, are almost exclusively subject to the uncertainty of month-to-month tenancy, a situation which might well not have occurred if tenants were not deprived of their right to serve as housing authority commissioners.

In short, one of the major problems of public housing programs as now constituted is that "local housing authorities themselves . . . have been a principal hindrance of progress." Hartman and Carr, "Housing Authorities Reconsidered," 35 Journal of the American Institute of Planners, 10, 11 (1969). Local hous-

ing authorities are a "hindrance" not because they wish to be but because they too often are unable to understand tenants' problems. They do not understand these problems because (1) they have little or no contact with individual tenants, (2) few commissioners have ever lived in public housing, and (3) the racial, class and income makeup of commissioners differs from that of their tenants.

Modern public housing tenants, unlike their predecessors during the 1930s and 1940s, are likely to be black and poor. Yet, although 55 percent of public housing tenants are black, only six percent of housing authority commissioners are. Hartman and Carr, *supra,* at 12. Housing authority commissioners are overwhelmingly male; yet fully 26 percent of public housing familes are headed by a female. *Id.* The income differential between commissioners and tenants is just as disparate. The median yearly income for public housing tenants in 1965 was $3,132, while the median for commissioners was $11,700, including 53 percent whose incomes exceeded $20,000 per year. *Id.* Most importantly, only three percent of housing authority commissioners questioned had ever lived in public housing. Not one of the commissioners surveyed currently resided at a public housing project. *Id.*

These marked differences in background between tenants and commissioners affect commissioners' attitudes toward tenants. Commissioners tend to perceive their constituents as lazy, shiftless and lacking initiative. Hartman and Carr, *supra,* at 16. Whether commissioners with a largely negative attitude toward tenants adequately respond to tenant grievances is a doubtful proposition. If, however, tenants serve as commissioners, it is highly probable that the prej-

udices of commissioners toward tenants will dissipate, as irrational prejudices often do when interpersonal contacts are initiated. As a consequence, commissioners will tend to give more credence to tenant grievances, which will, in turn, result in contented tenants' taking more pride in their residences. Unhappiness within public housing projects is a luxury which neither tenants nor local housing authorities can afford.

CONCLUSION

In the face of public housing's myriad problems, it is safe to say that local housing authorities may not be able to exist much longer without significant and rapid increase in tenant participation in management decisions. Amicus wholeheartedly agrees with Professor Friedman in stating that:

> ways should be sought to make tenants feel more of a stake in a place which, after all and despite its defects, is their home and which is in theory run for their benefit, not the benefit of the government. [Friedman, "Public Housing and the Poor: An Overview," 54 Calif. L. Rev. 642, 668 (1966).]

For the above reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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